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Effects of the Anti-Money Laundering Provisions[1] of the USA Patriot Act on Insurance Companies & Insurance Regulators

Background

Money laundering can briefly be described as the process by which the proceeds of criminal activity are made to appear legitimate. The federal government has enacted laws designed to make the money laundering process more difficult. Such laws criminalize the act of money laundering (Money Laundering Control Act) and establish reporting requirements for certain types of currency transactions and suspicious activity (Bank Secrecy Act). The reporting requirements are primarily directed at banks; historically, insurance companies have not been subject to federal anti-money laundering reporting requirements.

The Money Laundering Control Act of 1986

The Money Laundering Control Act is codified at 18 USC 1956, 1957 and, under certain circumstances, makes it a federal felony to spend, save, transport, or transmit proceeds of criminal activity.

The Bank Secrecy Act of 1970

The Bank Secrecy Act[2] (BSA) is codified at 31 USC 5311-5330 and gives the Secretary of the U.S. Treasury Department broad powers to implement anti-money laundering regulations on financial institutions, and such regulations are implemented by the Treasury Secretary through 31 CFR 103. The BSA requires banks and other financial institutions to file "currency transaction reports" and "suspicious activity reports" with the Treasury Department upon performing certain transactions. "Financial institutions" are defined at 31 USC 5312, which does explicitly include "insurance companies." However, even though the BSA gives the Treasury Secretary the authority to impose BSA anti-money laundering requirements on insurance companies, the Secretary has yet to choose to do so.

The USA Patriot Act of 2001

The USA Patriot Act was enacted by Pres. Bush on Oct. 26, 2001 and is directed primarily at anti-terrorism. Title III of the Act contains several new anti-money laundering provisions that affect financial institutions and may affect insurance companies and insurance regulators. The Treasury Secretary has the authority to impose these provisions on financial institutions, and since the definition of financial institutions includes insurance companies, these provisions may also be imposed on insurance companies unless exempted through regulation. The applicable sections are as follows:

[1] Detailed in "The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001," Title III of the USA Patriot Act of 2001; enacted by Pres. Bush on Oct. 26, 2001.
[2] The NAIC is a member of the U.S. Treasury Department's Bank Secrecy Act Advisory Group.

Sec. 311. Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern. (to be codified at 31 USC 5318A)

The Secretary may require domestic financial institutions and domestic financial agencies to maintain records and/or file reports on certain transactions if such transactions are determined by the Secretary to be of primary money laundering concern. In determining which transactions are of concern, the Secretary will consider the international, jurisdictional, & institutional factors of the transaction. The reports shall include: 1) the identity and address of participants in the transaction, including the identity of the originator of any funds transfer; 2) the legal capacity in which a participant in the transaction is acting; 3) the identity of the beneficial owner of funds involved in the transaction; and 4) a description of the transaction.

With respect to non-bank financial institutions, the Secretary shall define the term "account" after consultation with the federal functional regulators (as defined in sec. 509 of the Gramm-Leach-Bliley Act).

Sec. 314. Cooperative Efforts to Deter Money Laundering.

By February 23, 2002, the Secretary shall adopt regulations to encourage cooperation among financial institutions, their regulatory authorities, and law enforcement, with the specific purpose of encouraging regulatory authorities and law enforcement to share money laundering information on individuals, entities, and organizations with financial institutions. Also, upon notice to the Secretary, two or more financial institutions and any association of financial institutions may share information with one another regarding the money laundering activities of individuals, entities, organizations, and countries. Such sharing shall not be liable for prosecution under any law and shall not constitute a violation of Title V privacy protections of the Gramm-Leach-Bliley Act.

At least semi-annually, the Secretary shall distribute a detailed analysis of suspicious activity to financial institutions.

Sec. 326. Verification of Identification. (to be codified at 31 USC 5318(l))

The Secretary shall prescribe regulations to require financial institutions (including insurance companies unless exempted) to implement reasonable procedures to: 1) verify the identity of any person seeking to open an account to the extent reasonable and practicable; 2) maintain records of the information used to verify a person's identity, including name, address, and other information; and 3) consult lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list. Such regulations shall take effect by October 25, 2002.

Such regulations shall be prescribed jointly with each federal functional regulator (as defined in sec. 509 of the GLBA). The Secretary may exempt any financial institution or type of account from the regulations.

Sec. 352. Anti-Money Laundering Programs. (to be codified at 31 USC 5318(h))

By April 24, 2002, each financial institution (including insurance companies unless exempted) shall establish anti-money laundering programs that include, at a minimum: 1) the development of internal policies, procedures, and controls; 2) the designation of a compliance officer; 3) an ongoing employee training program; and 4) an independent audit function to test anti-money laundering programs.

After consultation with the federal functional regulators (as defined in sec. 509 of the GLBA), the Secretary may prescribe minimum standards for anti-money laundering programs, and may exempt insurance companies.